

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BARRY SIMON JAMESON,

Petitioner,

v.

JAMES A. YATES, Warden,

Respondent.

No. C 07-03160 SBA (PR)

**ORDER GRANTING RESPONDENT'S
REQUEST TO WITHDRAW MOTION
TO DISMISS; TERMINATING MOTION
TO DISMISS; AND SETTING BRIEFING
SCHEDULE**

(Docket no. 9)

Petitioner filed this pro se habeas corpus petition pursuant to 28 U.S.C. § 2254. Respondent filed a motion to dismiss the habeas corpus petition as unexhausted (docket no. 9). Petitioner filed an opposition to the motion to dismiss.

Respondent now seeks to withdraw his motion to dismiss in view of evidence that Petitioner has exhausted his state court remedies as to the claims in his petition (docket no. 11). Respondent also requests an opportunity to file another motion to dismiss. Petitioner has filed a response to the reply indicating that he objects to Respondent's request for leave to file another motion to dismiss.

Respondent's request to withdraw his motion to dismiss is GRANTED. Accordingly, the motion to dismiss (docket no. 9) is hereby WITHDRAWN and TERMINATED. The Court now sets a new schedule below for the parties to file their briefs pursuant to the September 4, 2007 Order to Show Cause. The Court also GRANTS Respondent leave to file another motion to dismiss on procedural grounds other than exhaustion, in lieu of an Answer.

The Court orders the following briefing schedule:

1. Respondent shall file with this Court and serve upon Petitioner, within **sixty (60) days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the Answer a copy of all portions of the relevant state records that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

2. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with

1 the Court and serving it on Respondent within **thirty (30) days** of his receipt of the Answer. Should
2 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **thirty (30) days**
3 after the date Petitioner is served with Respondent's Answer.

4 3. Respondent has also been granted leave to file a motion to dismiss on procedural
5 grounds other than exhaustion, in lieu of an Answer, as set forth in the Advisory Committee Notes to
6 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner
7 shall file with the Court and serve on Respondent an opposition or statement of non-opposition to the
8 motion within **thirty (30) days** of receipt of the motion, and Respondent shall file with the Court and
9 serve on Petitioner a reply within **fifteen (15) days** of receipt of any opposition.


10 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
11 and Respondent informed of any change of address and must comply with the Court's orders in a
12 timely fashion. Petitioner must also serve on Respondent's counsel all communications with the
13 Court by mailing a true copy of the document to Respondent's counsel.

14 5. Extensions of time are not favored, though reasonable extensions will be granted.
15 Any motion for an extension of time must be filed no later than **ten (10) days** prior to the deadline
16 sought to be extended.

17 6. This Order terminates Docket no. 9.

18 IT IS SO ORDERED.

19 DATED: 9/5/08

20 
21 SAUNDRA BROWN ARMSTRONG
22 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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6 BARRY SIMON JAMESON,
7 Plaintiff,

Case Number: CV07-03160 SBA

CERTIFICATE OF SERVICE

8 v.

9 JAMES A. YATES et al,
10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on September 9, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
17 in the Clerk's office.

18 Barry Simon Jameson CDCR # C88511
19 Pleasant Valley State Prison
20 California Department of Corrections and Rehabilitation
Post Office Box 8502
Coalinga, CA 93210-8502

21 Dated: September 9, 2008

22 Richard W. Wieking, Clerk
23 By: LISA R CLARK, Deputy Clerk
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